

and

WHEREAS, [REDACTED] has submitted a proposal dated _____, 2013 (the "Bid") offering to provide a cost effective solution for providing the services and performing all other necessary work as expressed in said proposal or bid submitted to the Town of Upper Marlboro.

NOW THEREFORE, in consideration of the promises and assurances of the parties hereto, and any other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, The Town of Upper Marlboro and the Contractor do hereby agree as follows:

I. CONTRACT DURATION

- 1.1 This Contract shall commence on the _____ day of _____, 2013, and end on the _____ day of _____, 2013, unless otherwise agreed to in writing by the parties.

II. CONTRACT PRICE AND PAYMENT TERMS

- 2.1 The Town hereby agrees that as consideration for construction of milling and asphalt repairs or services as described in the Town's Invitation to Bid entitled "Marlborough Towne Roadways, Streets and Paving Areas Reconstruction Project" and herein, the Town shall compensate the Contractor using the quoted rates as enumerated in the Proposal or Schedule of Bids received from the Contractor dated _____, 2013, both attached hereto as Exhibit 1 and Exhibit 2, and incorporated by reference herein.
- 2.2 Payment shall be made within thirty (30) days of completion and inspection of all work and correction of any deficiencies pursuant to Paragraph ____ of said Invitation to Bid.
- 2.3 After 30 days, interest will be added to any outstanding balance at the rate of 1.5% per month. All costs of collection, including reasonable attorney's fees, will be added to the balance due whether a suit is filed or not.
- 2.4 Any changes, modifications, amendments to or attachments that affect this Contract or any part of this Contract require acceptance by signature of the Town's Designee as referenced in said Invitation to Bid.

III. THE WORK

- 3.1 The Contractor shall perform all the work required by the submitted Proposal and this Contract, as outlined in the attached Invitation to Bid, which are incorporated by reference into this Contract as if written word for word. The Contractor hereby agrees to perform this Contract pursuant to the regulations and standards for road and street repair as referenced in said Invitation to Bid.
- 3.2 The Contractor shall supply all labor, material, and supervision necessary to construct proposed improvements or repairs in accordance with all federal, state, county and municipal regulations pertaining to a project of this type.

IV. TIME OF COMMENCEMENT, PROGRESS AND COMPLETION

- 4.1 The Work to be performed under this Contract shall be commenced after execution of this Contract and in accordance with said Invitation to Bid (Prosecution to Work provision), and substantial completion shall be achieved as stated therein.
- 4.2 The Town reserves the right to approve which streets and any appurtenant facilities, if any, shall receive milling or asphalt repairs pursuant to this Contract on a street-by-street or parking area basis and the Contractor agrees to refrain from undertaking any repairs or work under this Contract unless, and until, the Town has issued or the Contractor has obtained a Notice to Proceed from the Town's Designee.

V. CONTRACT SUM

- 5.1 The Owner shall pay the Contractor in current funds for the performance of the work, subject to addition and deductions by Change Order as provided in the Contract, a Contract Sum not to exceed \$____,000.00 unless otherwise approved in writing by the Board of Town Commissioners.

VI. TAX STATUS

- 6.1 The Town of Upper Marlboro, a municipality and body politic formed under the Laws of the State of Maryland, is a tax-exempt government organization. Upon request, the Town will furnish a tax exempt certificate for Contractor's information.

VII. OFFICIALS NOT TO BENEFIT

- 7.1 No employee or official of the Town government may be permitted to personally receive any part or share of services or consideration of this Contract that is any different from any other citizen of the Town, or to any personal benefit arising from it.

VIII. INSURANCE

- 8.1 The Contractor shall provide at its own expense comprehensive automobile bodily injury and property damage liability insurance covering all vehicles, whether such vehicles are owned, hired or non-owner operated, or operated by/or on behalf of the Contractor in the performance of this Contract, with not less than the units or coverage specified in Paragraph ____ (Contractor's Insurance) of said Invitation to Bid.
- 8.2 The Contractor will also obtain and pay premiums for the following insurance: Workers' Compensation concurrent with the Maryland Statutory Limit.
- 8.3 Public Liability and Property Damage Insurance, naming the Town and Marlborough Towne Homeowners Association, Inc., as additional insured, in an amount not less than the units or terms specified in Paragraph ____ (Contractor's Insurance) of said Invitation to Bid.

- 8.4 Prior to commencing performance under this Contract, the Contractor shall furnish to the Town of Upper Marlboro, a Certificate of Insurance for each of the foregoing coverages. The Certificates shall contain provisions allowing for at least ten (10) days prior written notice of any cancellation or material change to be provided to the Town of Upper Marlboro. The insurance companies providing such insurance shall be acceptable to the Town.

IX. CERTIFICATE OF GOOD STANDING

- 9.1 Before commencing work and upon request, the Contractor agrees to obtain a Certificate of Good Standing from the Maryland State Department of Assessments and Taxation and provide a copy to the Town. The Town reserves the exclusive right to consider or declare this Contract to be voidable should the Contractor fail to supply said certificate prior to commencing work.

X. TERMINATION FOR DEFAULT

- 10.1 The Contractor's right to perform this Contract may be terminated by the Town of Upper Marlboro in the event services are not performed as stated in this Contract.
- 10.2 The Contractor's right to continue performance under this Contract shall not be terminated nor the Contractor charged with damages if his performance was interrupted by extreme weather conditions or other acts of God, public disturbance, acts of war, or other valid cause beyond the Contractor's control, however, failure of the Contractor's equipment is not considered to be a valid reason for non-performance under this Contract. Furthermore, the Contractor must recommence work interrupted for any reason when directed by the Town's Designee upon cessation of cause for such interruption.

XI. TERMINATION FOR CONVENIENCE

- 11.1 In addition to the authority granted to the Town's Designee pursuant to the Invitation to Bid, the Town of Upper Marlboro may further elect to terminate all or any part of this Contract for its convenience by providing at least two (2) days prior written notice to the Contractor. If the Town does terminate this Contract for its convenience, the Town shall pay the Contractor compensation for its performance up to the termination date.

XII. ASSIGNMENT

- 12.1 All covenants and agreements herein contained shall extend to and be obligatory on the successor and assigns of the Contractor, but the Contractor shall not assign this Contract or any payment to become due hereunder except with the prior written consent of the Town of Upper Marlboro or its Designee.

XIII. TOOLS AND EQUIPMENT

- 13.1 The Contractor shall provide all equipment and tools, both powered and manual, to perform the operations described in the requirements of performance or scope of work and as may be common to these operations.

XIV. LIENS

- 14.1 All services, and construction performed by the Contractor and materials used under this Contract shall be kept free from any claims, liens, and charges.

XV. SAFETY

- 15.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including those required by law or as otherwise stated in said Invitation to Bid in connection with the performance of the work. The Contractor shall promptly remedy damages and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

XVI. DAMAGE TO THE TOWN OF UPPER MARLBORO OWNED PROPERTY OR PRIVATE PROPERTY

- 16.1 The Contractor agrees to compensate the Town of Upper Marlboro, its citizens, and other persons for any loss that they may suffer due to thefts or peculations, by employees of the Contractor or its subcontractors.
- 16.2 Should employees or agents of the Contractor or its subcontractors cause damage or loss to public or private property, Contractor shall immediately notify the Town's Designee of the location, cause, and time of damage. Contractor agrees to repair or replace any such damage or loss, to the Town to its complete satisfaction, at the Contractor's own expense.

XVII. REQUIREMENTS OF PERFORMANCE

- 17.1 The Contractor shall furnish all labor, materials, equipment and supervision to construct and repair pursuant to this Contract in accordance with all Federal and State laws, by-laws, ordinances and regulations in any manner affecting the conduct of work, and shall indemnify and save harmless the Town and the Marlborough Towne Homeowners Association and its representatives against any claim arising from the violation of any such law, by-law, ordinance or regulation, whether by the Contractor, Subcontractor, or their employees.

XVIII. INDEMNIFICATION

- 18.1 In addition to Section 17.1, the Contractor agrees to further indemnify, defend and hold the Town of Upper Marlboro and the Marlborough Towne Homeowners Association, Inc. harmless from and against any and all actions, proceedings, claims or demands as stated in said Invitation to Bid, attached hereto and incorporated by reference herein. Such indemnification shall be binding upon the heirs, assigns and legal representatives of the Town of Upper Marlboro, the Marlborough Towne Homeowners Association, Inc. and the Contractor, and its performance shall be governed by, construed and enforced in accordance with the laws of and applicable to the State of Maryland.

XIX. DIVISIBILITY

- 19.1 In the event that any part of this Contract shall, at any time or to any extent, be judicially declared invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Each provision of this Contract shall be valid and enforced to the fullest extent permitted by the law.

XX. HEADINGS, SECTIONS AND RECITALS

- 20.1 The Contract Headings and Sections are provided for convenience only and shall not affect the construction hereof. All Sections are intended to create one agreement binding on the parties hereto. Any provisions, warranties or other terms found in said Invitation to Bid or the Contractor's Proposal, and whether specifically referenced herein or not, shall survive this agreement and be considered merged into this Contract. Any conflict between this Contract and any documents referenced herein shall be harmonized as based on the parties' intent, or if otherwise irreconcilable shall be settled in favor of the terms of this Contract. Furthermore, the above recitals and the referenced attachments are incorporated herein.

XXI. AMENDMENTS AND COUNTERPARTS

- 21.1 Any amendments to this Contract must be in writing and signed by authorized representatives of both the Town and the Contractor.
- 21.2 This Contract may be executed in counterparts.

IN WITNESS WHEREOF, this Contract has been executed by the parties as of the day, month and year as set forth herein below.

THE TOWN OF UPPER MARLBORO

By: _____
signature

Title

Date

contractor

By: _____
signature

Title

Date

Attachments

- 1) Town's Invitation to Bid entitled "Marlborough Towne Roadways, Streets and Paving Areas Reconstruction Project"
- 2) _____ Proposal dated _____, _____, 2013
contractor